

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 27412 of 2006

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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LOGOS MISSION HIGHER SECONDARY SCHOOL - Petitioner(s)
Versus
STATE OF GUJARAT THR' SECRETARY & 3 - Respondent(s)

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Appearance :

MR RAMKRISHNA B DAVE for Petitioner(s)
MS KRINA P.CALLA, AGP for Respondent(s) 1-3
MR HARSHIT S TOLIA for Respondent(s) : 4

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 25/04/2007

ORAL JUDGMENT (Per : HONOURABLE MR.JUSTICE J.M.PANCHAL)

1. Rule. Ms.Krina P.Callla, learned Assistant Government Pleader, waives service of notice on behalf of the respondents No.1 to 3.

Mr.H.S.Tolia, learned advocate, waives service of notice on behalf of the respondent No.4. Having regard to the facts of the case, the petition is heard today.

2. By filing the instant petition under Article 226 of the Constitution, the petitioner has prayed to issue a Writ of Mandamus of any other appropriate Writ or order to quash the seizure and detention of vehicle No.GJ-5-Z-894 by the respondent No.3 under Section 207 of the Motor Vehicles Act, 1988 ("the Act" for short). The petitioner has further prayed to issue a Writ of Mandamus or any other appropriate Writ or order directing the respondent No.3 to release the petitioner's vehicle No.GJ-5-Z-894 forthwith. It is also prayed by the petitioner to issue a Writ of Mandamus or any other appropriate Writ or order directing the respondent No.3 to effect the transfer of vehicle No.GJ-5-Z-894 in the name of the petitioner. It is also prayed to direct the said respondent to recover the

taxes at the rate applicable to the bus of educational institutions.

3. The abovenumbered vehicle is registered in the name of Shri Meghani Education Trust, Surat, i.e. the respondent No.4, since July 5, 2005. The case of the petitioner is that the respondent No.4 has paid tax from June 28, 2005 to May 31, 2006 and June 1, 2006 to May 31, 2007. According to the petitioner, the respondent No.1 issued Notification dated May 16, 2006 granting partial exemption to Contract Carriage Omni Buses used solely for transporting the students of educational institutions without deciding the representation which was made pursuant to order dated August 18, 2004, made by the High Court or without rescinding the earlier exemption Notification dated June 24, 1936. The claim of the petitioner is that the petitioner purchased the said vehicle on June 29, 2006, after which an application was made to transfer the vehicle in its name, but the

vehicle is not transferred in the name of the petitioner. According to the petitioner, the Inspector of Motor Vehicles issued checking memo on September 25, 2006, whereas on November 10, 2006, tax of Rs.1,82,580/- was demanded from the petitioner with penalty of Rs.45,645/-. The case of the petitioner is that the said vehicle is attached for non-payment of amount of tax with penalty. The petitioner has averred that all the relevant documents were produced for consideration of the concerned officer so that the application made by the petitioner to transfer the vehicle in its name can be considered but those documents were not considered by the competent authority at all and the vehicle is not transferred in the name of the petitioner. Under the circumstances, the petitioner has filed the instant petition and claimed reliefs to which reference is made earlier.

4. During the course of hearing of the petition, Ms.Krina P.Calla, learned Assistant Government

Pleader for respondents No.1 to 3, has pointed out that the alternative remedy available to the petitioner under Section 207(2) of the Act is already resorted to and therefore, the petition should not be entertained. This Court has verified from the learned counsel for the petitioner and it is admitted by the learned counsel for the petitioner that application, as contemplated by sub-section 2 of Section 207 of the Act, is already made before the respondent No.3 which is pending for consideration.

5. As the petitioner has already resorted to the alternative remedy available under the Act and made application for transferring the vehicle in its name, this Court is of the opinion that interest of justice would be served if appropriate direction is given to the respondent No.3 to decide the application submitted by the petitioner under sub-section 2 of Section 207 of the Act as well as the application dated June 29, 2006, submitted by

the petitioner for transfer of the vehicle in its name on merits and in accordance with law within the time to be stipulated in this order.

6. For the foregoing reasons, the petition partly succeeds. The respondent No.3 is directed to decide the application dated October 9, 2006, made by the petitioner under sub-section 2 of Section 207 of the Motor Vehicles Act, 1988, as well as the application dated June 29, 2006, submitted by the petitioner for transfer of the vehicle in its name, on merits and in accordance with law as early as possible and preferably within one month from today. The petitioner is directed to produce all the relevant documents which may be necessary to enable the respondent No.3 to decide the abovereferred to two applications made by it. Subject to abovereferred to directions, Rule is made absolute to the extent indicated hereinabove. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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